

DIMA (Migration) [2019] AATA 2787 (15 March 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Ms Glykeria DIMA

CASE NUMBER: 1718356

HOME AFFAIRS REFERENCE(S): BCC2016/628957

MEMBER: Angela Cranston

DATE: 15 March 2019

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:

- cl.820.211(2)(a) and cl 820.221 of Schedule 2 to the Regulations

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- Statement made on 15 March 2019 at 2:52pm
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CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine spousal relationship – shared bank account – joint wills – living together – recognised as a couple by friends and family – have a child together – travelled together – decision under review remitted

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A; Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

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STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant applied for the visa on 13 February 2016 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. In the application, the parties stated that they first met in Greece on 15 August 2014, committed to a shared life together to the exclusion of all others on 25 December 2014, and married on 5 February 2016. A New South Wales marriage certificate was also provided.
5. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.221 for the following reasons:

You and your sponsor have not provided any evidence regarding the financial aspects of your relationship ...

You and your sponsor provided the following evidence regarding the nature of your household:

mail to your Commonwealth Bank account at [address]

As you and your sponsor applied on spouse grounds, you must establish that you are living together. I am not satisfied that you and your sponsor have shared the responsibilities of the household.

You and your sponsor provided the following evidence regarding social aspects of your relationship:

photos

statutory declaration from Peter Souflias

Overall you and your sponsor provided some evidence that you present yourself as a couple to family or the wider community, however this evidence alone is insufficient to demonstrate that you are in a genuine and continuing spousal relationship with your sponsor.

..

You and your sponsor provided the following evidence regarding your mutual commitment to each other:

personal statements

ceremonial and registered marriage certificates

You and your sponsor claim to first met each other on 15/8/2014. You and your sponsor were married on 5/2/2016 and I accept that you and your sponsor lawfully married as you have provided a marriage certificate. However you and your sponsor have not provided any evidence that you have combined your affairs significantly or combined many other aspects of your lives together to show that you see the relationship as a long-term one.

6. The review applicant applied for review and provided the following:

7. As a background to this statement, Glykeria and I come from the same village in Greece. Our families had contact through the years but I have not seen Glykeria since 1988 and I had not visited Greece for a decade since 2004.

8. I first met Glykeria Dima on 15 August 2014 while in Greece visiting family. We met during a family gathering celebrating the 15 August which is a major religious celebration of the Greek orthodox religion.

9. Couple of weeks after the initial meeting with Glykeria, I departed Greece for home (Sydney Australia). Glykeria and I kept in contact via social media (Facebook, WhatsApp and Viber) and phone calls. During this period we got to know each other better and we arranged to meet for a two week holiday in Thailand during the Christmas and New Year's season (2015-2016).

10. We spent two wonderful and amazing weeks together in Thailand! We travelled together and did many activities together by visiting temples and beaches. During this period we committed to a mutually exclusive relationship to the exclusion of all others. Following these two weeks I returned to Sydney and Glykeria returned to Athens Greece.

11. After we returned to our respective homes Glykeria and I kept in daily contact via social media and phone calls. Following this period I visited Greece in June 2015 for four weeks and spent the whole of this period with Glykeria travelling in Greece and living with her in Athens.

12. After the four week period I departed Greece and returned to Sydney. Once again Glykeria and I kept in daily contact via social media and phone calls. During this period of time I felt and realised that Glykeria has the qualities of a person that I wanted to spend the rest of my life with and start a family.

13. Once again I travelled to Greece in August 2015, three weeks after I returned, for a two-week period where I formally met Glykeria's family and proposed to her. After my short trip to Greece and return to Sydney, Glykeria and I kept on a daily contact via social media and phone calls.

14. Glykeria visited me in Sydney in December 2015 and we have lived together ever since. We got married in February 2016. Glykeria returned to Greece for a short period of time (June to September 2016) to finalise her local affairs and spend some time with her parents. During this period we kept in daily contact via social media and phone calls. I visited Greece in August-September 2016 and we spend time with Glykeria's family as I needed to get to know them a bit better and we did a bit of travelling around Greece. We returned together to Sydney in September 2016 and have been living together.

15. Glykeria and I fell pregnant in late December 2016 and throughout the pregnancy I supported Glykeria emotionally and accompanied Glykeria to all medical and health check appointments.

16. In April 2017 Glykeria and I visited Greece for approximately two weeks during the Greek Orthodox Easter. The purpose of our visit was for Glykeria to see her family, her family to see her during her pregnancy and for me to spend some time with her family.
17. In August 20, 2017 our baby daughter Zoe was born. The birth of our child has cemented our relationship. So he has become the epicentre of our existence. My relationship with Glykeria has blossomed and has reached a new level as we both became parents for the first time.
18. Zoe is also the first grandchild's my parents who also live in Sydney. My parents adore Zoe and are thankful that we have had a child. My parents visit often and we reciprocate on a weekly basis.
19. In addition my sister Dimitra Vassos, has been with us along the whole journey from pregnancy to birth and the first year of Zoe's. Dimitra spends lots of time with Zoe and Glykeria and their bond is a testament to true family ties.
20. To see and experience the bond that has developed between all of us as a family is incredible and powerful.
21. Glykeria's mother, Stella Dima, visited and stayed with us for a 2 month period in January 2018. Stella spend time with Zoe every minute of the day and help Glykeria with the early stages of motherhood.
22. Zoe's health issues (refer to our surgeon's letter and hospital attendance register) since she was born to this day has strengthened the relationship between myself and Glykeria as we equally care for Zoe at home and in hospital and attend to all her medical appointments together.
23. Glykeria and I share most if not all of the daily household activities, example washing, cleaning etc. We budget together for our household expenses.
24. In relation to shared finances we have a shared bank account since December 2015. Also we have joined private health insurance policy (growing family) since July 2016 as we were planning to start a family in 2017. Also we have a joint energy contract for our household. Evidence of the above has been provided as part of this application for review.
25. In relation to estate planning, both Glykeria and I have reciprocal appointments of enduring Guardian, enduring powers of attorney and wills. All of the above documents have been provided as part of this application for review.
26. Closing this statement I can honestly and truthfully state that my relationship with Glykeria is genuine, loving, caring and it will endure the test of time. We share a cultural background and family ties. Most of all our child Zoe is proof of our existence and our relationship.
27. Also provided was the birth certificate for their daughter Zoe Vassos, facebook chat and wattsApp conversation records, photos of the parties together with baby and family, joint wills, statutory declarations from Dimitra Vassos (the sponsor's sister), John Mazis (the parties friend), Maryand Nicholas Lianos (the parties friends), Rita Jayarani Lamack (the parties friend), Bank statements for a joint account, and various correspondence for the parties addressed to one address.
28. Movement records indicate that the sponsor departed Australia and 11 July 2014 and returned on 31 August 2014. He again departed on 21 December 2014 and arrived on 4

January 2015. He again departed on 4 June 2015 and arrived on 4 July 2015. He again departed on 31 July 2015 and arrived on 19 August 2015. He again departed on 22 August 2016 and arrived on 27 September 2016. He again departed on 10 April 2017 and arrived on 25 April 2017.

29. Movement records also indicate the applicant arrived on 2 December 2015 on a tourist visa and departed on 19 June 2016. She again arrived on 27 September 2016 and departed on 10 April 2017. She again arrived on 25 April 2017.
30. For the following reasons, the Tribunal has concluded that the **matter should be remitted for reconsideration**.

CONSIDERATION OF CLAIMS AND EVIDENCE

31. The focus of the Tribunal's considerations in the circumstances of this matter are whether the parties at the time of application and decision have a mutual commitment to a shared life together in a genuine and continuing relationship.

Whether the parties are in a spouse or de facto relationship

32. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
33. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

34. On the evidence of the marriage certificate, the parties were married to each other in New South Wales on 5 February 2016 under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

35. In forming an opinion whether they are in a spouse relationship and in considering whether they have a mutual commitment to a shared life as husband and wife to the exclusion of all others, whether their relationship is genuine and continuing, and whether they live together or do not live separately and apart on a permanent basis as required by s.5F(2)(b)-(d), the Tribunal has had regard to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3).

36. The Tribunal notes that the Departmental officer found that they were not satisfied on the basis of the information given that the parties were in a genuine and continuing relationship because of a lack of evidence in relation to financial, household and social aspects and a lack of evidence as to the parties commitment to one another. Since then, the parties have provided substantial documentation that identifies that they share a bank account and have joint wills, have been living together, are recognised as a couple by friends and family and have had a baby together. The Tribunal is also satisfied that the parties movement records indicate that they have continued to spend time together including travelling in and out of Australia together after they married on 5 February 2016. The Tribunal is also satisfied on the basis of the evidence that they have continued to communicate in a meaningful way and on a regular basis when apart.. The Tribunal is also satisfied that the parties' families and friends, are all genuinely supportive of the relationship and wish the parties well.
37. On the basis of all the evidence, the Tribunal is satisfied that at the time of application and decision, the Tribunal is satisfied that the parties have a mutual commitment to shared life to the exclusion of others; genuine and continuing relationship; and live together on a permanent basis).
38. On the basis of the above the Tribunal **is** satisfied that the requirements of s.5F(2) are met at **the time the visa application was made and at the time of this decision.**
39. Therefore the applicant meets cl.820.211(2)(a) and **cl.820.221.**
40. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

41. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- cl.820.211(2)(a) and cl 820.221 of Schedule 2 to the Regulations

Angela Cranston
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).